

REPUBLIC OF KENYA

High Court at Mombasa

Divorce Cause 48 of 2012

B. B. D. S.....PETITIONER

VERSUS

S. M. J. L.....RESPONDENT

JUDGMENT

The petitioner **B.B.D.S** has filed this petition dated 11th September, 2012 seeking the dissolution of his marriage to the respondent **S.M.J.L**. The respondent despite having been properly served with both the petition and summons to enter appearance did not enter appearance and did not file any reply to the petition. The matter therefore proceeded as an undefended cause.

The petitioner in his evidence told the court that he and the respondent met in Dar-es-salaam where they both worked. They became friends which friendship culminated in their marriage on 26th January, 2002. He produces in court the original copy of the marriage certificate serial No. [particulars withheld] as proof of their marriage **Pexb1**. The petitioner proceeded to testify that after the celebration of their marriage the couple cohabited as man and wife in Mombasa. No children were born of their union. All was well until 2007 when the respondent left the matrimonial home, took all her belongings and moved back to her parents' home in Dar-es-salaam. The couple have not lived together from that time to date.

As stated earlier the respondent despite being properly served chose not to participate in these proceedings. The evidence of the petitioner therefore remains unchallenged and uncorroborated. Section 81(b) of the Matrimonial Causes Act Cap 152 Laws of Kenya provides that a divorce may be granted on the ground that one spouse has deserted the other without cause for a period of three (3) years preceding the filing of the petition. The respondent left the matrimonial home in 2007 and this petition was filed in 2012 – five (5) years after she left. The respondent's action in leaving the matrimonial home and moving to live in Tanzania amounted to constructive desertion. A marriage cannot be sustained where one spouse chooses to live away from the matrimonial home. The petitioner told the court that the respondent wanted him to move to live in Tanzania with her. He was however not able to oblige as he runs his family business in Mombasa and also is responsible for his elderly mother. The respondent's insistence that the couple move to Tanzania was therefore in the circumstances unreasonable. Since 2007 the parties have lived apart – a period now of six (6) years. It is clear that their union has broken down. I am satisfied that the ground of desertion has been proved and on this basis I do allow this petition for divorce. Decree nisi to issue to be made absolute within three (3) months of today's date. No order on costs.

Dated and delivered in Mombasa this 16th day of April, 2013.

M. ODERO
JUDGE

In the presence of:
Mr. Satchu for Petitioner
Court Clerk Mutisya